

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARVIN C. FOSTER, AF-2281,)	
)	
Petitioner,)	No. C 14-0051 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
FRED FOULK, Acting Warden,)	(Dkt. #2)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at High Desert State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Santa Clara County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Petitioner was convicted by a jury of assault with a deadly weapon and inflicting corporal injury on a spouse or co-habitant. The court also found true allegations that petitioner had suffered three prior serious felony convictions, three prior strike convictions and had served two prior prison terms. On October 15, 2010, petitioner was sentenced to 65 years to life in state prison.

Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on October 10, 2012 denied review of petitions allegedly raising the same claims raised here.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

B. Claims

Petitioner seeks federal habeas corpus relief by raising several claims, including ineffective assistance of counsel, instructional error, improper amendment of the information during trial and cumulative prejudice. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner’s request to proceed in forma pauperis (dkt. #2) is
GRANTED.

2. The clerk shall serve a copy of this order and the petition and all attachments thereto on respondent and respondent’s attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule

1 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
2 habeas corpus should not be granted. Respondent shall file with the answer and
3 serve on petitioner a copy of all portions of the state trial record that have been
4 transcribed previously and that are relevant to a determination of the issues
5 presented by the petition.

6 If petitioner wishes to respond to the answer, he shall do so by filing a
7 traverse with the court and serving it on respondent within 30 days of his receipt
8 of the answer.

9 4. Respondent may file a motion to dismiss on procedural grounds in
10 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
11 Rules Governing Section 2254 Cases. If respondent files such a motion,
12 petitioner must serve and file an opposition or statement of non-opposition not
13 more than 28 days after the motion is served and filed, and respondent must serve
14 and file a reply to an opposition not more than 14 days after the opposition is
15 served and filed.

16 5. Petitioner is reminded that all communications with the court must
17 be served on respondent by mailing a true copy of the document to respondent's
18 counsel. Petitioner must also keep the court and all parties informed of any
19 change of address.

20 SO ORDERED.

21 DATED: June 2, 2014



CHARLES R. BREYER
United States District Judge